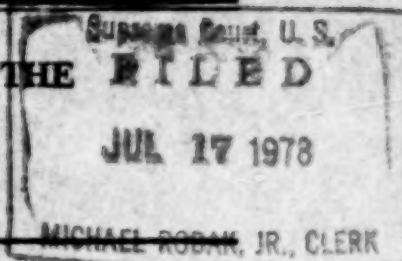


**IN THE SUPREME COURT OF THE  
UNITED STATES  
OCTOBER TERM, 1977  
No. 77-1793**



**CITY OF WARREN AND COUNCIL OF THE  
CITY OF WARREN, themselves and for  
all of the inhabitants and owners of  
real property in the City of Warren,**

**Petitioners,**

**VS**

**MICHAEL J. KELLY, DONALD E. HOLBROOK,  
and LOUIS D. MCGREGOR, Judges of the  
Michigan Court of Appeals,**

**Respondents.**

**On Petition For A Writ of Certiorari To The  
United States Court of Appeals For  
The Sixth Circuit**

**BRIEF FOR RESPONDENTS IN OPPOSITION**

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---

### BRIEF FOR RESPONDENTS IN OPPOSITION

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#### OPINIONS BELOW

Respondents, Judges of the Michigan Court of Appeals,  
accept Petitioners' statement of the opinions below.

#### JURISDICTION

Respondents, Judges of the Michigan Court of Appeals,  
accept Petitioners' statement of jurisdiction.

### QUESTION PRESENTED

Whether the United States District Court for the Eastern District of Michigan had jurisdiction over civil rights action under 42 USC § 1983 seeking to challenge the validity of a judgment of the Michigan Court of Appeals?

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the constitutional and statutory provisions quoted in the Petition, this case involves the following portions of the Michigan General Court Rules:

GCR 1963, 853.1:

"Grounds. Appeal may be taken to the Supreme Court only upon application and leave granted, in the discretion of the Supreme Court, from any decision of the Court of Appeals, interlocutory or final, upon a showing of a meritorious basis for appeal and any one of the following grounds.

"(1) The subject matter of the appeal involves legal principles of major significance to the jurisprudence of the State.

"(2) The decision of the Court of Appeals is clearly erroneous and will cause material injustice.

"(3) The decision is in conflict with decisions of the Supreme Court or other Court of Appeals decisions.

"(4) In any appeal of an interlocutory order of the Court of Appeals, it must be shown that appellant would suffer substantial harm by awaiting final judgment before taking appeal."

GCR 1963, 862.5(a):

"An original action for superintending control in the nature of mandamus or prohibition may be filed in the Supreme Court to implement the superintending or supervisory control power of the Supreme Court over the Court of Appeals, where an application for leave to appeal cannot properly be filed."

### STATEMENT OF THE CASE

On October 18, 1974, Petitioners commenced a civil action in the state circuit court against the Michigan State Construction Code Commission and the County of Macomb alleging that certain sections of the Michigan Construction Code Act of 1972 (MCLA § 125.1501, *et seq*; MSA 5.2949(1), *et seq*) constituted an unlawful delegation of legislative power to the Commission and violated the Michigan Constitution. Subsequently the state circuit court entered two temporary restraining orders exempting the City of Warren from the operation of the act and temporarily restraining and enjoining the Commission and the County from enforcing the act against the City of Warren. The Commission filed an application for emergency leave to appeal to the Michigan Court of Appeals and a motion for immediate consideration, and on November 27, 1974, the Michigan Court of Appeals granted the Commission's application and motion and stayed the proceedings in the state circuit court.

In its brief in the Michigan Court of Appeals Petitioners argued, *inter alia*, that adjudication of the case by the Court of Appeals would deprive Petitioners of their rights to a fair trial in a fair tribunal as guaranteed by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

In its decision the Michigan Court of Appeals reversed the grant of the temporary injunction in the circuit court and dismissed the complaint. *City of Warren v State Construction Code Commission*, 66 Mich App 493, 239 NW2d 640 (1976). Pursuant to Michigan General Court Rules, GCR 1963, 853.1, an appeal may be taken to the Michigan Supreme Court only upon application and leave granted in the discretion of the Supreme Court from any decision of the Court of Appeals. Petitioners did not file an application for leave to appeal from the decision of the Michigan Court of Appeals but filed a complaint for a writ of superintending control in the Supreme Court, GCR 1963, 862.5, seeking to vacate the decision of the Court of Appeals. On April 26, 1976, the Michigan Supreme Court dismissed the complaint for an order of superintending control as inappropriate under the court rule.

Petitioners brought a civil rights action pursuant to 42 USC § 1983 against the members of the panel of the Michigan Court of Appeals which decided the case, alleging that their decision violated Petitioners' constitutional rights. Pursuant to Respondents' motion, the United States District Court for the Eastern District of Michigan dismissed the complaint for lack of jurisdiction. That dismissal was affirmed on appeal to the United States Court of Appeals for the Sixth Circuit.

## ARGUMENT

THE PETITION PRESENTS NO IMPORTANT QUESTIONS OF FEDERAL LAW WHICH MUST BE DECIDED BY THIS COURT SINCE THE DECISION BELOW IS CLEARLY CORRECT AND IS NOT IN CONFLICT WITH OTHER DECISIONS OF THIS COURT.

Petitioner's complaint in the district court alleged that Respondents, present and former judges of the Michigan Court of Appeals, violated Petitioners' constitutional rights when they issued the decision in *City of Warren v State Construction Code Commission*, *supra*, 66 Mich App 493. The prayer for relief in the complaint, and the amended complaint, requested a declaration that the Respondents had deprived Petitioners of due process of law and the equal protection of laws and further requested "such subsequent relief as may be appropriate, pursuant to 28 USC § 2202, and such other and further equitable relief as may be necessary."

Although ostensibly filed against the individual judges comprising the panel which decided the case, it is readily apparent that the complaint filed in the district court is nothing more than a thinly disguised attempt to attack the validity of the *judgment* of the Michigan Court of Appeals. Although the prayer for relief does not, in so many words, seek to prevent the enforcement of the Michigan Court of Appeals judgment, that is indisputably the goal of this litigation. What possible purpose would be achieved by a declaration that Petitioners' rights were violated by the Court of Appeals judgment unless the enforcement of that judgment was prevented? Although Petitioners attempted to carefully draw their complaint in such a manner as to give the appearance of suing the judges

rather than the judgment, the District Court saw through this subterfuge and correctly concluded that Petitioners were, in effect, attempting to appeal to the United States District Court from the decision of the Michigan Court of Appeals. As concluded by the District Court and affirmed by the Court of Appeals, such an action is clearly improper and the District Court was without jurisdiction to entertain the case.

Although not specifically mentioned in the Michigan Court of Appeals decision, *City of Warren v State Construction Code Commission, supra*, 68 Mich App, the constitutional question at issue here was presented to the Court and must be deemed to have been conclusively decided against Petitioners:

"In the opinion of the state court there is no express mention of the constitutional grounds upon which the appellant asked a reversal of the order . . . and from this it is argued that the constitutional validity of the order was not determined, and therefore as to that matter the judgment is not *res judicata*. But the argument is not sound. The question of the constitutional validity of the order was distinctly presented by the appellant's position and necessarily was resolved against him by the judgment affirming the order. Omitting to mention that question in the opinion did not eliminate it from the case or make the judgment of affirmance any the less an adjudication of it." *Grubb v Public Utilities Commission of Ohio*, 281 US 470, 477-478 (1930).

The appropriate remedy for Petitioners' dissatisfaction with the decision of the Michigan Court of Appeals was by way of application for leave to appeal to the Michigan Supreme Court and, perhaps, review by this Court. Instead of pursuing these remedies, Petitioners attempted to challenge the validity of the Michigan Court of Appeals decision in the United States

District Court. It is axiomatic that the United States District Courts have no jurisdiction to entertain such an action:

"If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication. [citations omitted] Under the legislation of congress, no court of the United States other than this Court could entertain a proceeding to reverse or modify the judgment for errors of that character. [citation omitted] To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the district courts is strictly original." *Rooker v Fidelity Trust Co*, 263 US 413, 415-416 (1923).

In *Brown v Chastain*, 416 F2d 1012 (CA 5, 1969), *cert den*, 397 US 951 (1970), the plaintiffs were unsuccessful in the state court in their attempt to obtain a free transcript for a civil appeal and thereafter unsuccessfully attempted to relitigate the issue in the federal courts:

"It is obvious from the complaint and the requested relief that the appellants are here attempting to relitigate their federal constitutional claim by obtaining a form of direct federal court review of the state decisions, since independent equitable proceedings to prevent the enforcement of a judgment are considered a direct attack upon it. See Restatement, Judgments, § 11, comment a (1942). The District Court was patently without jurisdiction to

engage in such a review." *Brown v Chastain, supra*, 416 F2d at 1013.

Similarly, in *Atchley v Greenhill*, 517 F2d 692 (CA 5, 1975), *cert den* 424 US 915 (1976), the Court of Appeals affirmed the dismissal, for lack of jurisdiction, of an action against a state trial judge and state Supreme Court justices under the Civil Rights Act seeking a declaration that state court judgments were void and seeking an injunction expunging the state judgment records and reinstating the case on the docket.

Petitioner argues that the District Judge confused the question of jurisdiction with the issue of the *res judicata* effect of the state court decision. A plain reading of the district court opinion indicates the contrary but in any event it is clear that the judgment of dismissal was proper since, in the words of the Court of Appeals (Petition, page 24), "the issues raised by appellants are altogether without merit." The record of the instant case indicates that dismissal is proper, whether on grounds of lack of jurisdiction, *res judicata*, lack of merit in the grounds presented, or immunity of the Respondents, see *Pierson v Ray*, 386 US 547 (1967); *Stump v Sparkman*, .... US ...., 55 L Ed 2d 331 (1978). The judgment of dismissal is clearly correct and is not in conflict with any other decisions of this Court, and it is apparent that this case presents no important questions of federal law which must be settled by this court.

## CONCLUSION

For the foregoing reasons it is requested that the petition for a writ of certiorari be denied.

Respectfully submitted,

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